IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 458/2005

Shaikh Mukhtar. ..... Petitioner.

V/s.

District Magistrate and others. ..... Respondents.

Mr. S. G. Dessai, Senior Advocate with Mr. Shivan Dessai, Advocate for the petitioner.

Mr. S. S. Kantak, Advocate General with Ms. R. Chodankar, Addl. Govt. Advocate for respondents No.1 and 2.

CORAM : D.D. SINHA &
N.A. BRITTO, JJ.

DATE : 2ND DECEMBER, 2005.

P.C.

Heard Mr. Dessai, the learned Senior Counsel for the petitioner and Mr. Kantak, the learned Advocate General for the respondents No.1 and 2. This writ petition is directed against the show cause notice issued to the petitioner as to why the NOC granted to the petitioner to get Licence No.GOA/298/E dated 14.08.2001 transferred in the name of the petitioner, should not be withdrawn in public interest and why the matter should not be reported to the Chief Controller of Explosives for cancellation of the licence. The grounds which are given in the show cause notice are twofold. Firstly, due to

blasting activities by the petitioner on the site in question, cracks have developed to the walls of the temple which is located nearby. It is mentioned in the said order/notice that according to the petitioner, the location of the temple is more than 500 metres away from the quarry of the petitioner and, therefore, there is no violation of any Rules of Goa Minor Minerals Concession Rules, 1985. The another ground mentioned in the order/notice is that there is an apprehension that if the blasting activities are permitted to continue further, more damage is likely to be caused to the nearby houses and other structures and, therefore, the petitioner is informed that pending the further enquiry and decision in the matter, stop the blasting operation in the quarry located in survey No.58/0 of Village Sanvordem of Sanguem Taluka, immediately.

2. Mr. Dessai, the learned Senior Counsel for the petitioner states that the District Magistrate has no jurisdiction under the Explosives Act to cancel, suspend or revoke the licence of the petitioner and consequently, there is no power vested in him to direct the petitioner to stop forthwith the activities in the quarry. It is further contended that since the order is without jurisdiction, the same cannot be sustained in law.

3. Mr. Kantak, the learned Advocate General, on the other hand contended that the Order/Notice dated 15.11.2005 is in the

nature of show cause notice pending the inquiry and the inquiry in this regard has already been commenced. It is contended that the District Magistrate , South Goa shall conclude the said inquiry within a period of 10 days by passing the final order in this regard. He submitted that since the District Magistrate shall take decision within 10 days, no indulgence at this stage may be shown in the petition.

4. Mr. Deesai, the learned Senior Counsel states that if this Court, at this stage is not inclined to show indulgence, in that case the petitioner may be permitted to submit objections to the impugned order/notice and appropriate directions be given to the District Magistrate, South Goa, Margao to conclude the inquiry within a stipulated.

5. We have considered the contentions canvassed by the learned Senior Counsel for the petitioner as well as the learned Advocate General and also perused the impugned order/notice dated 15.11.2005 issued by the District Magistrate. A perusal of the impugned Order clearly demonstrates that the order is in the nature of show cause notice and is issued only for the purpose of informing the petitioner as to why the NOC granted to him should not be cancelled for the reasons mentioned in the show cause notice. After the show cause notice is issued to the petitioner, inquiry has already been commenced in the matter as referred to herinabove. The petitioner

will have every opportunity to putforth his objections before the District Magistrate and since the inquiry has already been commenced, in our view it will be appropriate to direct the respondent /District Magistrate to hear the petitioner and conclude the inquiry within a period of 10 days from the date of receipt of this order. We permit the petitioner to submit all objections that he wants to raise against the show cause notice before the District Magistrate.

6. Since the blasting activities of the petitioner are already suspended, the District Magistrate shall take decision within the period stipulated hereinabove and no further time shall be granted. If the order that would be passed by the District Magistrate is adverse to the petitioner, he shall be entitled to challenge the same. Needless to mention that the District Magistrate shall provide all material to the petitoner based on which the show cause notice is issued to the petitioner.

The petitioner undertakes to appear before the District Magistrate, South Goa, Margao on Monday, the 5th December, 2005.

With these observations and and directions, the writ petition is disposed of. Copy of this order duly authenticated be issued to the petitioner.

D. D. SINHA, J.

N.A. BRITTO, J.

ssm.